

### **REMARKS/ARGUMENTS**

These remarks are made in response to the Office Action of February 19, 2008 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Examiner is expressly authorized to charge any deficiencies to Deposit Account No. 50-0951.

#### **Claim Rejections – 35 USC § 101**

Claims 1-5 were rejected under 35 U.S.C. § 101 because it was alleged that the claimed invention is directed to non-statutory subject matter. More specifically, it was asserted that independent Claim 1 recites a method listing functional or logic steps of program or algorithm which is a non-statutory matter.

According to the Interim Guidelines on Patentable Subject Matter, the first step in determining whether a claim is directed to a statutory subject matter is to determine whether the claim is directed toward at least one of the enumerated subject matter categories - process, machine, manufacture or composition of matter. Claims 1-5 are directed to a process and thus clearly fall within one of the enumerated subject matter categories. The next step is to determine whether the claimed invention falls within a judicial exception to statutory subject matter; that is, determine whether the claim is directed to nothing more than an abstract idea, law of nature, or natural phenomenon.

With regard to Claims 1-5, first, it is noted that the claimed invention is directed to a method of indicating various types of audio content within an audio file, not a program or algorithm as alleged in the Office Action. Second, even if assuming Claims 1-5 are directed to an algorithm, it is noted that an algorithm is unpatentable only to the extent that it represents an abstract idea. The process of indicating various types of audio content within an audio file using audio tags clearly does not represent an abstract idea, but rather is a process that accomplishes a useful and concrete result. Therefore,

Applicants believe that the claimed invention of Claims 1-5 is directed to a statutory subject matter.

Claims 6-12 were rejected under 35 U.S.C. § 101, it being asserted that the claims are directed to non-statutory subject matter. More specifically, it was asserted in the Office Action that independent Claim 6 recites an audio file comprising content as information data which represents audio signal and is a non-statutory matter.

Although Applicants believe that a person skilled in the art would understand an audio file as a recording existing on certain recording medium, Claims 6-12 have been amended to specifically recite an audio file recorded on a machine readable storage medium, which clearly represents a statutory subject matter.

Claims 20-26 were rejected under 35 U.S.C. § 101 because it was alleged that the claimed invention is directed to a non-statutory subject matter. More specifically, it was asserted that independent Claim 20 recites a machine readable storage with program code with executable instructions to perform steps, which concerns mere program that is a non-statutory matter.

It is noted that Claims 20-26 concern a machine readable storage (interchangeable with "computer-readable medium"), not a mere program. It is also noted that a "computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permits the computer program's functionality to be realized, and is thus statutory" (see MPEP 2106.01 I).

Applicants thus respectfully request that the claim rejections under 35 U.S.C. § 101 be withdrawn.

#### **Claim Rejections – 35 USC § 112**

Claims 13-19 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. More specifically, it was asserted that

independent Claim 13 recites a system with multiple means to perform actions, but the specification describes only one means: a digital audio processor.

It is noted that a digital audio processor can include multiple means, each performing a corresponding action. When a system includes multiple means, it is not necessary that each means be separate from the other means.

Applicants thus respectfully request that the claim rejections under 35 U.S.C. § 112 be withdrawn.

#### **Claim Rejections – 35 USC §§ 102 & 103**

Claims 1, 4-6, 9-13, 16-20, and 23-26 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,721,827 to Logan (hereinafter Logan). Claims 2-3, 7-8, 14-15, and 21-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logan in view of U.S. Patent 5,943,402 to Hamel (hereinafter Hamel).

Although Applicants respectfully disagree with the rejections, Applicants have amended the claims so as to expedite prosecution of the present application by emphasizing certain aspects of the invention. However, such amendments should not be interpreted as the surrender of any subject matter, and Applicants expressly reserve the right to present the original version of any of the amended claims in any future divisional or continuation applications from the present application.

Applicants have amended independent Claims 1, 6, 13, and 20 to further emphasize certain aspects of the invention. As discussed herein, the claim amendments are fully supported throughout the Specification. No new matter has been introduced by the claim amendments.

#### **Aspects of Applicants' Invention**

It may be helpful to reiterate certain aspects of Applicants' invention prior to addressing the cited references. One embodiment of the invention, as typified by amended Claim 1, is a method of marking various types of audio content within an audio file.

The method can include, for each type of audio content, defining a set of audio tags comprising an opening tag and a closing tag; associating the set of audio tags with a corresponding type of audio content; marking a starting location of the corresponding type of audio content within the audio file using the opening tag; and marking an ending location of the corresponding type of audio content within the audio file using the closing tag. See, e.g., Specification, paragraph [0020]; see also Fig. 2.

**The Claims Define Over The Prior Art**

Fig. 7 of Logan shows that a text file expressed in hypertext markup language (HTML) is translated into the combination of an audio speech file, a text file transcript, and a sequencing file used by the player to create a multimedia presentation. It is noted that the record pairs, such as "I" and "J", and "H" and "E", in the selections file 470 do not necessarily mark different types of audio content. Rather, as shown in Fig. 7, "I" and "J" mark for an image; and "H" and "E" mark for the phrase "Television and motion pictures". Clearly, Logan does not disclose marking various types of audio content within an audio file using a set of tags comprising an opening tag and a closing tag, as recited in independent Claims 1, 6, 13, and 20.

Accordingly, the cited references, alone or in combination, fail to disclose or suggest each and every element of Claims 1, 6, 13, and 20, as amended. Applicants therefore respectfully submit that amended Claims 1, 6, 13, and 20 define over the prior art. Furthermore, as each of the remaining claims depends from Claim 1, 6, 13, or 20 while reciting additional features, Applicants further respectfully submit that the remaining claims likewise define over the prior art.

Applicants thus respectfully request that the claim rejections under 35 U.S.C. §§ 102 & 103 be withdrawn.

**CONCLUSION**

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

AKERMAN SENTERFITT

Date: May 19, 2008

/Richard A. Hinson/

Gregory A. Nelson, Registration No. 30,577

Richard A. Hinson, Registration No. 47,652

Yonghong Chen, Registration No. 56,150

Customer No. 40987

Post Office Box 3188

West Palm Beach, FL 33402-3188

Telephone: (561) 653-5000